

ROBERT S. YOUNG, JR.
LINDSAY YOUNG
ROBERT S. MARQUIS
ROBERT S. STONE
J. CHRISTOPHER KIRK
MARK K. WILLIAMS
JANIE C. PORTER
GREGORY B. ERICKSON
R. SCOTT ELMORE
TAMMY KAUSIAS
BENET S. THEISS
ALLEN W. BLEVINS

McCAMPBELL & YOUNG

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

2021 PLAZA TOWER
POST OFFICE BOX 550
KNOXVILLE, TENNESSEE 37901-0550

(615) 637-1440
TELECOPIER (615) 546-9731

October 12, 1995

ORIGINAL

H. H. McCAMPBELL, JR. (1905-1974)
F. GRAHAM BARTLETT (1920-1982)

ALSO ADMITTED IN
VIRGINIA:
ROBERT S. MARQUIS

Via Federal Express

William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

ATTENTION: Allocations Branch

Re: MM Docket No. 93-316
Amendment of FM Table of Allotments
(Douglas, Unionville, and Tifton, Georgia)

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Dear Mr. Caton:

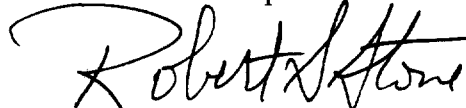
On behalf of our client, Orchon Media, Inc., permittee of unbuilt station WKZZ(FM), Douglas, Georgia, we submit herewith an original and four (4) copies of its Opposition to Petition for Reconsideration in the above proceeding.

Also enclosed is an additional copy of the Opposition which we would appreciate your returning to the undersigned in the enclosed postage-paid, self-addressed envelope after it has been date-stamped by your office.

Should you or any members of your staff have questions concerning the enclosed, please contact the undersigned for clarification. Thank you for your cooperation in this matter.

Sincerely,

MCCAMPBELL & YOUNG
A Professional Corporation



Robert S. Stone

RSS/cs

Enclosures: as stated

cc: Orchon Media, Inc.
Shaun A. Maher, Esq.
Clyde Scott, Jr.

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:) MM Docket No. 93-316
)
Amendment of Section 73.202(b))
Table of Allotments,) RM-8403
FM Broadcast Stations.)
(Douglas, Unionville, and Tifton Georgia))

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To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

OPPOSITION TO PETITION FOR RECONSIDERATION

Orchon Media, Inc. ("Orchon") permittee of WKZZ(FM) and Petitioner in the above-captioned rule making proceeding, by counsel, and pursuant to §§ 1.4(b)(1) and 1.429 of the Commission's rules and regulations, hereby respectfully submits its opposition to the "Petition for Reconsideration" filed on or about August 21, 1995 by Tifton Broadcasting Corporation ("TBC").¹ TBC's Petition for Reconsideration, clearly filed for the purpose of frustrating Orchon's efforts by delaying finality of the Commission's reallocation of FM Channel 223A from Douglas, Georgia to Tifton, Georgia as an upgraded Channel 223C3, is completely without merit and should be summarily dismissed or denied. In support whereof, the following is shown:

1. TBC is the licensee of WTIF(AM), Tifton, Georgia, and WJYF(FM), Nashville, Georgia.² TBC argues that the Commission action in *Douglas, Tifton, and Unionville, Georgia*,

¹ TBC's Petition for Reconsideration was published in the Federal Register on September 29, 1995. 60 *Fed. Reg.* 50623 (Sept. 29, 1995).

² TBC's entry for WJYF in the 1995 edition of *Broadcasting and Cable Yearbook* reflects that WJYF is co-located with WTIF in Tifton and has apparently no physical connection with its community of license.

DA95-1513, released July 17, 1995 ("*Report and Order*") should be reversed and that FM Channel 223 should remain at Douglas, Georgia.

2. In support of its position, TBC asserts that the Commission only briefly mentioned its earlier opposition to Orchon's counterproposal which proposed the reallocation of Channel 223 to Tifton, and that the Commission ignored the Commission's own public interest standards when making the reallocation. Specifically, TBC asserts that the reallocation of the channel from Douglas to Tifton serves only Orchon's private interests and that Orchon should be required to rebut TBC's claim that Orchon should have proposed an upgrade for WKZZ at Douglas rather than Tifton. Finally, and perhaps most remarkably, TBC recognizes the Commission's pending rule making proceeding in Docket No. 95-110, wherein the Commission proposes to eliminate the "automatic stay" provision of § 1.420(f) of the Commission's rules by claiming that it "reserves the right to seek a stay" of the Commission's reallocation in this proceeding in the event the Commission retroactively applies the elimination of the automatic stay.

3. Initially, Orchon regrets that the comment deadline in Docket No. 95-110 has passed. Orchon can think of no finer example as support for the deletion of that portion of § 1.420(f) of the Commission's rules providing for an automatic stay upon the filing of a petition for reconsideration of an order modifying an authorization to specify operation on a different channel than TBC's petition in this proceeding. TBC's Petition for Reconsideration is completely meritless and is obviously filed for the exclusive purpose of delaying implementation of improved broadcast service to the public. Thus, while Orchon does not concede that Channel 223C3 is a "different channel" from Channel 223A for purposes of the automatic stay rule, it is clear that TBC is interested in nothing more than frustrating Orchon's proposal to improve service to the public.

4. Contrary to TBC's claims, the Commission did in fact address its opposition to Orchon's counterproposal in this proceeding. In fact, the Report and Order devoted the majority of discussion to TBC's arguments. *Report and Order* at ¶ 7-8. There, the Commission correctly noted that Orchon's counterproposal would result in a preferential arrangement of allotments pursuant to the Commission's longstanding criteria which were reaffirmed in *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094, 7096 (1990). Because the proposed reallocation of FM Channel 223 to Tifton would not have left the community of Douglas underserved and would have resulted in a net gain of service to over 50,000 persons and a loss area in theory only to 29,537 persons, the Commission correctly found that the reallocation of the channel to Tifton (population 14,215) would serve the public interest and comply with the Commission's mandate as set forth in § 307(b) of the Communications Act of 1934, as amended.

5. It is well established that a petition for reconsideration will not be entertained "merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken." *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub nom, Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert denied* 383 U.S. 967 (1966). TBC has raised absolutely no new argument in its Petition for Reconsideration. Every single contention made by TBC in its Petition for Reconsideration has been raised and rejected by the Commission.

6. To the extent TBC would propose the upgrade of FM Channel 223 at Douglas, rather than Tifton, Orchon would remind the Commission that the deadline for counterproposals in this proceeding was February 25, 1994. Meanwhile, the Commission has complied fully with its standards when reallocating FM Channel 223A to Tifton as FM Channel 223C3. *Blanchard, Louisiana and Stephens, Arkansas*, FCC 95-327, released September 11, 1995 (Commission has

uniformly made reallocation decisions based on population difference and comparison of reception services).


WHEREFORE, premises considered, Orchon Media, Inc. respectfully urges the Commission to summarily dismiss or deny the "Petition for Reconsideration" of Tifton Broadcasting Corporation.

DATED this 12th day of October, 1995.

Respectfully Submitted,

ORCHON MEDIA, INC.

MCCAMPBELL & YOUNG, P.C.
Its Attorneys


By: 
Robert S. Stone

MCCAMPBELL & YOUNG
A Professional Corporation
2021 Plaza Tower
P. O. Box 550
Knoxville, Tennessee 37901-0550
(615) 637-1440

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of the foregoing Opposition to Petition for Reconsideration has been served, this 12th day of October, 1995 upon all counsel or parties as listed below at interest in this cause by delivering a true and exact copy to the offices of said counsel or parties or by placing a copy in the United States mail addressed to said counsel or parties at his/her office, with sufficient postage to carry it to its destination, or by special overnight courier.

Gary S. Smithwick, Esq.
Shaun A. Maher, Esq.
Smith & Wick and Belendiuk, P.C.
1990 M Street, N.W.
Suite 510
Washington, DC 20026



Robert S. Stone